IN THE COURT OF APPEAL
ON APPEAL FROM THE HIGH COURT

CRIMINAL APPEAL NO: AAU 91 of 2010
(High Court HAC 46 of 2008)

BETWEEN   :   **SALENDRA SEN SINHA**

Appellant

AND   :   **THE STATE**

Respondent

Coram   :   **Calanchini AP**
                     Chandra JA

Counsel   :   **Appellant in person.**
                     Mr M Korovou for the Respondent.

Date of Hearing   :   **17 May 2013**

Date of Ruling   :   **30 May 2013**

RULING

[1].   When the Appellant's application for leave to appeal against conviction and sentence
came before a single judge of the Court on 15 October 2012, the learned judge was
informed by the Appellant that he wanted to withdraw his appeals. By letter dated 15
October 2012 the Appellant confirmed his application to abandon his appeals.

[2].   As a result the application was transmitted to the Court of Appeal for its consideration pursuant to Rule 39 of the Court of Appeal Rules (the Rules).

[3].   Pursuant to the authority given under section 6(2) of the Court of Appeal Act Cap 12 the application was listed before two judges as a duly constituted Court for the hearing of the application.

[4].   The Appellant was convicted on 29 October 2010 by the High Court on one count of causing payment of money by virtue of a forged instrument and one count of money laundering. He was sentenced to a term of imprisonment of two years with a non-parole term of 18 months.

[5].   When the application was called before the Court of Appeal the Appellant confirmed that he was applying to withdraw his appeal against conviction and sentence. The procedure to be followed by the Court in the present application was outlined by the Supreme Court in **Jone Masirewa –v- The State** (unreported criminal appeal CAV 14 of 2008 delivered 17 August 2010) at paragraph 11:

> *"Where written or oral applications are made by an unrepresented petitioner seeking leave to withdraw an appeal, appellate courts should proceed with caution. It would be prudent for instance to ask the (appellant), on the day the matter is listed for hearing, why the (appeal) was to be withdrawn, whether any pressure had been brought to bear on the (appellant) to do so, and whether the decision to abandon had been considered beforehand. This inquiry should be made of the petitioner personally and recorded even in cases where the petitioner is represented. The purpose of the inquiry is to establish that the decision to withdraw has been made deliberately, intentionally and without mistake. Ideally, the decision should be informed also."*

[6].   Under Rule 39 the Court of Appeal is empowered to order that an appeal should be dismissed presumably, upon it granting an application by an appellant to abandon or withdraw his appeal. In my view the fact that it is the Court of Appeal that dismisses the appeal indicates that the procedure is more than a routine administrative task capable of being performed by the Registry. The effect of the words used in Rule 39 when considered with the decision of the Supreme Court in **Masirewa –v- The State**

(supra) is that the application must be placed before the Court of Appeal. The Court of Appeal is required to hear the application in accordance with the procedure set out by the Supreme Court. In the event that the Court of Appeal is satisfied that the Appellant's application is bona fide, voluntary and informed, the Court will grant the application and the appeal will then be dismissed by the Court of Appeal.

[7].   The Appellant informed the Court that the reason for his abandoning his appeal was because he has now served his sentence. Although still in custody, he is serving a sentence for unrelated matters. He informed the Court that he understood the consequences of his application being granted. He stated that his application to abandon his appeal against both conviction and sentence had been made voluntarily and without any pressure or coercion.

[8].   As a result the application is granted and the appeals against conviction and sentence to this Court are dismissed.

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HON. JUSTICE W. D. CALANCHINI
ACTING PRESIDENT

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HON. JUSTICE S. CHANDRA
JUSTICE OF APPEAL